IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/09/2002

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THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR

Writ Petition No.465 of 1995

K.N.Ganapathy ... Petitioner

-Vs-

1.State of Tamil Nadu
rep.by its Secretary to Government
Home Department, Fort St.George
Madras-600 009.

2.The Managing Director
General Insurance Corporation
of India Limited, Universal
Assurance Building, Church Gate
Bombay. ... Respondents

Petition under Article 226 of the Constitution of India praying for the issue of a writ of mandamus as stated therein.

For Petitioner : Mr.Ramakrishnan

For Respondents : : R1 - Mr.S.T.S.Murthy
Special Govt.Pleader

R2 : Mrs.Chitra Sampath

:O R D E R

This writ petition is filed by one Mr.K.N.Ganapathy in the year 1995 . In this writ petition, the petitioner claims to be a student of Asian Institute of Management, Manila, Philippines, having been graduated from Christian College, Madras and obtaining a decree in Physics soon thereafter. He claims that he was thereafter employed in a factory at Ambattur, Madras. He has then pleaded certain facts suggesting that he would be required to enjoy good health to complete and pursue further education. In para 3 of the petition, the petitioner pleads that he was in Madras, now Chennai, in the year 1994 and on 6.2.199 4, he met with a very serious accident while going in a Maruti car as a passenger. He has thereafter given the total number injuries that he had suffered to his face, eye and other parts of the body. He claims that the accident had occurred on account of a hit by a lorry to the Maruti car. According to him, it was a case of hit and run. He then

complains that though the complaint was given to the police station. The police were unable to find out the said lorry now could they arrest the driver, who according to him was driving that lorry in a rash and negligent manner. He then claims that he stayed in the hospital for 16 days and that he had to suffer a hospital bill of about 1.50 lakhs. The petitioner then claims that as a citizen he would be entitled to claim a compensation against the State Government. In para 7, he points out that the General Insurance Company, which is the holding company of all the nationalised insurance companies, would also be liable to compensate the petitioner. Along with this writ petition, the petitioner has filed the insurance policies of the Oriental Insurance Company, a cover note, accident and injury report issued by the Apollo Hospital and other reports regarding his injuries.

2. A counter came to be filed to this writ petition, both by the State of Tamilnadu as also by the Managing Director, General Insurance Corporation. In their counter, the first respondent has pointed out that the writ petition was for the beneficial monetary relief and was not maintainable. They further pointed out that this accident had occurred on 6.2.1994 at 4'O clock in the morning at College Road and it had taken place between a Maruti car bearing No.TN-01-1267 and a lorry TMJ 3553. The counter then makes it clear that there were in all six persons travelling in the car, they being the driver, one Mr.R. Raju Chesetty and four occupants of the car namely 1) Miss.Nithya, aged about 19 years 2) Miss.Ranjini, aged about 21 years, and 3) Mr.S. Madappa, aged about 26 years 4) Mr.B.M.Bopanna, aged about 23 years, besides the petitioner who himself is 24 years old. It is pointed out that the investigation was going on in pursuance of the criminal case registered. It is then pointed out that inspite of the best efforts of the police, the lorry could not be located and the number of the lorry was actually a number allotted to a motor cycle as per the records of the Regional Transport Office, Chennai. It is then pointed out that under Section 161 of the Motor Vehicles Act, there is a provision for the payment of compensation in the hit and run cases. It was also pointed out that the monetary liability in such cases is controlled and limited under that section and, therefore, the claim of the petitioner for Rs.14 lakhs would be of no consequence.

4. In their counter, the second respondent-General Insurance Corporation reiterated that the Motor Vehicles Act had made a specific provision for hit and run cases and it provided a compensation for Rs.2,00 0/- and it was revised to Rs.12,500/- from 14.11.1994. The insurance company also refuted its liability on the ground that firstly the vehicle, either the one belonging to the petitioner or the lorry was not insured with it as it could be insured only with subsidiary companies. In short, the respondents have refuted their liability. Both the respondents have also challenged the tenability of the writ petition on the ground that there were number of questions of fact involved.

5. Learned counsel Mr.Ramakrishnan very earnestly argued that this was a case where the petitioner had almost lost a limb and his eye sight was also impaired on account of the accident. Learned counsel further argues that it would be the State's resposibility to find out the erring lorry driver and the State Government having failed in carrying out that responsibility, should

be held responsible for the compensation and should be made to pay the compensation. Learned counsel further urges that the safety on the road was the prime object of the State government and it would be one of its prime duties, so also nabbing of the criminals would also be its prime duties. It having failed in its duty, the state government was liable to compensate the petitioner.

6. As against this, the learned Special Government Pleader pleaded that this writ petition was almost in the nature of a suit under Torts Law. The learned Government Pleader pointed out that it was not known as to how the petitioner had evaluated his claim at Rs.14 lakhs. According to the government pleader, the petition was wanting in all the relevant details. This was besides the fact that the petition being almost in the nature of civil suit for damages involving number of questions of fact was not tenable before this court under article 226. Learned Government Pleader points out that the facts ascertained in the counter that there were in all six people travelling in the Maruti Car was not even denied or contradicted by the petitioner by filing any other affidavit. The learned Government Pleader, therefore, questioned as to how in a small Maruti Car, six persons could be travelling. According to him, this fact itself would be very relevant in judging as to whether it was the negligence on the part of the lorry driver alone or whether there was any contributory negligence on the part of the petitioner's driver also. In short, the learned Government Pleader argues that number of questions of fact would be involved, which would be required to be proved by evidence and therefore the writ petition was not maintainable. The Government Pleader also argues that the right remedy for the petitioner would have been to approach under Section 161 of the Motor Vehicles Act, which specifically provides for a fund created for the help of the victims of hit and run cases,where the erring vehicles are not available or are not apprehended.

7. Considering these rival stands, firstly it must be stated that the writ petition itself is extremely vague in terms. It does not provide any basic facts. While arguing, the learned counsel for the petitioner could not deny that there were six people travelling in the car. One fails to appreciate as to how six persons could travel in such a small car, all the six being well developed individuals of mature age. It is therefore that I have quoted the names of the occupants in the car with their respective ages. They were all undoubtedly fully grown human beings. When specifically asked as to whether this question would be a relevant question in considering the factum of negligence, the learned counsel was fair enough to say that this was undoubtedly one of the relevant factors. If this is so, then it would have been for the petitioner to approach the right forum because he could have still shown by letting the evidence before that forum that though the car was over crowded it did not in any manner contribute towards the accident. It was pointed out to the learned counsel that excepting the affidavit of the petitioner, even the driver's affidavit was not filed along with the writ petition asserting that he was not at all at fault. Therefore, when the petitioner comes before this Court with a specific claim for a compensation of Rs.14 lakhs, the first q2uestion that the court would ask is as to how this sum was arrived at and whether in arriving at the same, the question of

contributory negligence has been considered or not. This is obviously wanting in this petition. There is no basis for the claim of Rs.14 lakhs.

8. This is besides the point as to whether in every hit and run case, merely because the State Government is not able to find out the erring vehicle, the State Government itself would become liable and whether such liability could be coaxed out of the State Government by way of a writ petition under Article 226. It is trite law that writ petition involving a disputed question of fact is never maintainable as the courts are slow to go into those questions particularly when the alternative remedies were and are available to the petitioner. It is not as if the petitioner comes from a strata of the society, which would require any legal help. The petitioner obviously comes from an educated and affluent background. It is not as if the petitioner, therefore, could claim a short cut by way of a writ petition instead of being driven to civil court. The petitioner could have afforded the remedy before the civil court. But, we are not on that subject strictly. The petitioner has not availed of the civil court and has chosen to come before this court straight away, that too on the basis of a petition which sadly lacks in the necessary details.

9. This is again besides the point whether the forum of the high court and that too by way of a writ petition under Article 226 could be used for a claim under Torts. The answer to that question will be in the plain negative. Even if the Supreme Court has been lenient towards the litigants, at least in the matters of the custodial deaths and so on, the fact remains that every case has to depend on its own facts. The Supreme Court, undoubtedly in some matters, has granted the damages, but at the same time the apex court had made it clear that such compensation which was granted would be besides the compensation which would be arrived at in a civil court, which suggests that the apex court was also of the opinion that the matters should and could be agitated before the proper forum. I would be slow to hold that at least in this case the petitioner could use this forum for claiming the damages under Torts. I will not go into the broad question as to whether in a case of hit and run, the state government ipso facto becomes liable to pay the compensation or damages as the case may be, to the suffering individual, because that would depend essentially on the facts of each case. But, as a general proposition, it is difficult to accept that in each and every hit and run case, merely because the erring vehicle is not apprehended by the state government, the state government should become answerable. That would be too broad a principle of law to be laid down. Last but not the least, it is now to hold that the total extent of damages is only Rs.12,500/- as per Section 161(3)(b) of the Motor Vehicle Act. The petitioner has not, therefore, exhausted that remedy. If he so wishes, he may still exhaust that remedy, if open to him under law. In short, the petition has no merits and the same is dismissed. No costs.

06.09.2002
Index : Yes
Website :Yes

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V.S.SIRPURKAR, J.

To :

1.State of Tamil Nadu
rep.by its Secretary
to Government
Home Department,
Fort St.George
Madras-600 009.

2.The Managing Director
General Insurance Corporation
of India Limited, Universal
Assurance Building, Church Gate
Bombay.